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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ROBERT J. LITTLE TREE II SHEEHEY and
SANDRA K. STRAIGHT TONGUE SHEEHEY and
PATRICK J. LITTLE TREE III SHEEHY and
BOBBI J. RUNNING BROOK SHEEHY and
BILLIE J. SWEET RAIN SHEEHY and
CASEY J. LITTLE FAWN SHEEHY,
by and through ROBERT J. LITTLE TREE II and
SANDRA K. STRAIGHT TOUNGUE SHEEHY and
SHERRY J. RAGING THUNDER SHEEHY,
by and through ROBERT J. LITTLE TREE II and
SANDRA K. STRAIGHT TONGUE SHEEHEY,

Petitioners,

-v-

060CV-0066A(Sc)
ORDER

NATIONAL APPEALS DIVISION and
FARM SERVICE AGENCY, and
UNITED STATES DEPARTMENT OF AGRICULTURE,
and HONORABLE MIKE JOHANNS, Secretary of Agriculture,

Respondents.

This petition for review of a final decision by the National Appeals Division was initially filed in the United States Court of Appeals for the Second Circuit, and by Order, dated November 15, 2005, the Second Circuit granted respondents' motion to transfer the petition to the appropriate district court pursuant to 7 U.S.C. § 6999, which provides that jurisdiction for review of a final determination of the National Appeals Division rests exclusively in the district courts. (Docket No. 15, Attachment #12). The Second Circuit also denied as moot the remaining motions then pending in that Court, including petitioner's motion to proceed *in forma*

pauperis (Docket No. 15, Attachment #4) and petitioners' motion for an injunction and stay of acceleration and foreclosure and treasury offsets pending appeal¹ (*id.*, Attachment, #6). On January 26, 2006, the Clerk of the United Court of Appeals for the Second Circuit certified for transfer the documents originally filed in that Court and transferred the petition to this Court.

Based on the Affidavit Accompanying Motion for Permission to Appeal *In Forma Pauperis* (Docket No. 14, Attachment, #4), Petitioners Robert J. Little Tree Sheehy and Sandra K. Straight Tongue Sheehy ("parents"), only, are granted permission to proceed *in forma pauperis* in this Court. The remaining petitioners, however, Patrick J. Little Tree III Sheehy, Bobbi J. Running Brook Sheehy, Billie J. Sweet Rain Sheehy, Casey J. Little Fawn Sheehy and Sherry J. Raging Thunder Sheehy ("children") are not granted permission to proceed *in forma pauperis* because they did not execute the Affidavit Accompanying Motion for Permission to Appeal *In Forma Pauperis* initially filed with the Second Circuit.

In addition, the complaint has been reviewed by the Court with respect to the 28 U.S.C. § 1915(e)(2) criteria. In that regard, the Court notes that, as a general rule, a parent who brings a *pro se* claim on behalf of his or her infant child may not act as the

¹If petitioners wish to refile their motion for a preliminary injunction and stay of acceleration and foreclosure and treasury offsets, they may do so but must follow the procedures set forth in Federal Rules of Civil Procedure 65 and Local Rules of Civil Procedure 65.

child's representative in the action because he or she is not an attorney admitted to practice before this Court and therefore may not proceed *pro se* on behalf of his or her minor child. See *Cheung v. Youth Orchestra Foundation of Buffalo*, 906 F.2d 59, 61 (2d Cir. 1990); Fed.R.Civ.P. 17(c). Furthermore, as a general rule, an infant plaintiff, as a minor, may not bring an action on his or her own behalf in federal court. Fed.R.Civ.P. 17(c). Only the children who are not infants can be petitioners in this proceeding, assuming they file applications to proceed *in forma pauperis*, because their parents cannot act on their behalf because the parents are not attorneys. Accordingly, if any of the children who are not infants wish to proceed as petitioners in this matter they must submit an application to proceed *in forma pauperis* and advise the Court of their age no later than **March 11, 2006, or they will be dismissed as petitioners in this action without further order.**

The Clerk of the Court is directed to send to petitioners Robert J. Little Tree Sheehy and Sandra K. Straight Tongue Sheehy applications to proceed *in forma pauperis* for use by the children who are not infants.

IT IS HEREBY ORDERED that petitioners Robert J. Little Tree Sheehy and Sandra K. Straight Tongue Sheehy are granted permission to proceed *in forma pauperis*;

FURTHER, that Patrick J. Little Tree III Sheehy, Bobbi J. Running Brook Sheehy, Billie J. Sweet Rain Sheehy, Casey J. Little

Fawn Sheehy and Sherry J. Raging Thunder Sheehy if they are not "infants" must file an application to proceed *in forma pauperis* and proof of age by **March 11, 2006**;

FURTHER, that failure to comply with this order by each of the children who are not infants by each of them submitting an application to proceed *in forma pauperis* and proof of age by **March 11, 2006**, will result in the dismissal of this case without prejudice as to them, without further order; and

FURTHER, the Clerk of the Court is directed to cause the United States Marshal to serve, pursuant to Fed.R.Civ.P. 4(i), copies of the Summons, Petition for Review (Docket No. 15, Attachment #12), and this Order upon the named respondents without petitioners' payment therefor, unpaid fees to be recoverable if this action terminates by monetary award in petitioners' favor.

SO ORDERED.

S/ Michael A. Telesca

MICHAEL A. TELESCA
United States District Judge

Dated: February 10, 2006
Rochester, New York